

**BEFORE THE PUBLIC UTILITIES COMMISSION OF
THE STATE OF CALIFORNIA**



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Order Instituting Rulemaking to Adopt
Biomethane Standards and Requirements,
Pipeline Open Access Rules, and Related
Enforcement Provisions.

Rulemaking 13-02-008
(Filed February 13, 2013)

**OPENING COMMENTS OF THE UTILITY REFORM NETWORK
ON THE PROPOSED DECISION IMPLEMENTING
A BIOMETHANE PROCUREMENT PROGRAM**



Lower bills. Livable planet.

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**OPENING COMMENTS OF THE UTILITY REFORM NETWORK
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A BIOMETHANE PROCUREMENT PROGRAM**

Pursuant to Rule 14.3, the Utility Reform Network (“TURN”) submits these comments on the Proposed *Decision Implementing Senate Bill 1440 Biomethane Procurement Program*, issued by Commissioner Rechtschaffen. Revision #1 of the proposed decision (“PD”), which superseded the PD, was issued on January 6, 2022.¹

I. SUMMARY

The PD adopts a program that is not mandated by law, and that is designed explicitly to promote the State’s laudable goal of meeting organic waste diversion targets set by SB 1383. The PD fails to even mention that the potential cost impact of meeting the proposed targets could be **over one billion dollars per year** in additional gas costs for home heating and hot water. Such a program is not necessary to provide utility gas service, and is not mandated by the provisions of SB 1383 or SB 1440.

TURN primary recommendation is that the PD should be withdrawn, and the Assigned Commissioner should issue a Ruling proposing further workshops, comments and/or hearings to comply with the requirements of SB 1440. Specifically, SB 1440 requires the Commission to find that any procurement targets are a cost-effective means of reducing short-lived climate pollutant (“SLCP”) emissions **prior to** adopting such targets. The PD flips this requirement on its head by adopting targets, directing the utilities to propose a cost-effectiveness methodology for submission via a Tier 2 Advice Letter, and authorizing procurement as soon as possible. The PD’s deferral of this issue to future Tier 2 advice letter filings is contrary to law and contrary to the purpose of advice letters.

If the Commission does not withdraw the PD, it must at a minimum modify the PD to correct several legal and policy errors. Most importantly, the PD defers the issue of cost allocation to a

¹ All references to “PD” in this document indicate the “Revision #1” version unless otherwise noted.

future ratesetting proceeding based on an incorrect legal conclusion that industry-wide cost allocation should be done in a ratesetting proceeding. This conclusion is not supported by statute, and conflicts with recent Commission decisions, including a decision issued by the same Assigned Commissioner less than one year ago. The PD should be modified either to allocate biomethane procurement costs to all gas customers through a public purpose program rate component on an equal cents per therm basis; or, alternatively, to authorize a memorandum account to track the cost premiums until such time as the Commission resolves the issue of who should pay for this environmental program.

The PD should be modified to correct additional errors, including:

- The PD incorrectly claims that SB 1383 is a basis for requiring utility customers to subsidize organic waste diversion by municipalities.
- The PD fails to address the requirements of § 651(b)(3), and instead directs utilities to use the M-RETS platform, which allows the procurement of digital certificates from projects anywhere in the country and does not meet the statutory requirement that biomethane procurement provide environmental benefits to California.
- The PD inequitably requires residential customers to pay the entire cost of wood and agricultural waste biogas projects.

II. THE PD VIOLATES THE REQUIREMENT OF SB 1440 TO ENSURE COST EFFECTIVE PROCUREMENT

A. The PD Violates Section 651(a)

SB 1440, as codified in Section 651(a) of the Public Utilities Code², unambiguously requires that “**prior to** establishing biomethane procurement targets or goals” the commission must find that “the targets or goals are cost-effective means of achieving the forecast reduction in the emissions of short-lived climate pollutants” The PD violates this requirement by adopting procurement goals, and apparently by authorizing actual procurement, without finding that the goals are a cost-effective means of reducing short-lived climate pollutants (SLCPs).

² All statutory references are to the Public Utilities Code unless indicated otherwise.

The PD “adopts” both a short-term procurement target³ and a medium-term target⁴ for the four large gas corporations (“joint utilities”) to procure biomethane by 2025 and 2030, respectively. The Commission directs the utilities to: 1) hold a workshop on cost-effectiveness within 30 days, 2) submit a Standard Biomethane Procurement Methodology addressing cost-effectiveness methodology via a Tier 2 Advice Letter within three months of the workshop,⁵ 3) submit Renewable Gas Procurement Plans (via a Tier 3 Advice Letter) within six months of the approval of the procurement methodology,⁶ and 4) submit contracts via advice letters whose tiers depend on contract price.⁷ However, the PD also directs the utilities to “start procurement as soon as possible,” using “a preliminary cost-effectiveness test developed in the workshop.”⁸ Thus, it appears that the utilities are authorized to submit contracts for biomethane procurement potentially as soon as one or two months after adoption of a final decision.

The proposed process, which adopts targets prior to any decision on cost-effectiveness, leaves cost-effectiveness determination subject to a Tier 2 Advice Letter, and authorizes procurement prior to any final determination on cost-effectiveness, violates the explicit and unambiguous requirement of Section 651 to find that the procurement targets are a cost-effective means of reducing SLCPs “prior to” authorizing any such targets. This delegation of required findings to future advice letter decisions thus constitutes legal error.

B. The Use of Advice Letters to Resolve Cost Effectiveness is Inappropriate and Violates General Order 96-B

General Order (G.O.) 96-B explains that the advice letter process is intended to provide “a quick and simplified review of the types of utility requests that are expected neither to be controversial nor to raise important policy questions,” or that implement changes to tariffs “in a manner

³ PD, p. 25 and Ordering Paragraph 3.

⁴ PD, p. 26 and Ordering Paragraph 4.

⁵ Ordering Paragraph 1.

⁶ Ordering Paragraph 11.

⁷ Ordering Paragraph 2.

⁸ PD, p. 28 and Ordering Paragraph 7.

previously authorized by statute or Commission order.”⁹ Furthermore, G.O. 96-B explains that a Tier 2 advice letter is appropriate to implement a change “pursuant to an index or formula that the Commission has approved.”¹⁰

The PD does not adopt any cost-effectiveness method, but notes that staff proposed that the utilities submit a cost-effectiveness methodology modeled on a voluntary program implemented by an Oregon utility.¹¹ A cursory review of the comments submitted on June 30, 2021 in this rulemaking, demonstrates that the staff proposal essentially punted the adoption of a cost-effectiveness evaluation to the utilities, and is anything but “non-controversial.”¹² The use of a Tier 2 Advice Letter process to adopt a cost-effectiveness methodology for a novel biomethane procurement program is inappropriate and contrary to the Commission’s general order.

The PD should be withdrawn. The Assigned Commissioner should issue a Ruling setting a process, including workshops, comments, and if necessary, formal hearings, to establish a cost-effectiveness methodology that must be applied to first determine, consistent with statutory requirements, whether and what biomethane procurement target is cost-effective.¹³

III. UTILITY CUSTOMER FUNDING OF BIOMETHANE PROCUREMENT IS NOT MANDATED BY STATE LAW EVEN IF IT ADVANCES THE GOALS OF SB 1383

The PD notes that SB 1383 mandates that the State reduce methane emissions by 40% below 2013 levels by 2030, and then concludes that in order to meet these methane reduction goals, the Commission should establish methane procurement targets and that biomethane should be substituted for well gas whenever the “total cost” of biomethane, including the full social cost of carbon calculated based on the total cost of climate change impacts, exceeds the cost of well

⁹ G.O. 96-B, Section 5.1, at 8.

¹⁰ G.O. 96-B, Industry Rule 5.2, at 3.

¹¹ PD, p. 7.

¹² For example, Comments of Joint Utilities, pp. 2-4; Comments of Sierra Club, pp. 5-9.

¹³ For a discussion on the deficiencies of the Staff Proposal on cost-effectiveness, see *TURN Comments on Staff Proposal*, June 30, 2021, pp. 2-4.

gas.¹⁴ Indeed, the PD goes even further to claim that even if “the total cost of a unit of biomethane exceeds the total cost of a unit of well gas,” it may still be proper use biomethane if “the substitution is necessary to enable the state to meet its methane emission reduction goals.”¹⁵

The PD’s conclusions misstate the law and violate Section 451. The methane emissions at issue here result from anaerobic digestion of municipal organic waste at landfills or organic waste diversion facilities. Even if reducing methane emissions by promoting biomethane capture at organic waste disposal sites is necessary to achieve SB 1383 targets, there is no legal basis for forcing utility customers to pay for such reductions by buying methane at prices ten to twenty times higher than prices for other methane sources. Section 451 requires all utility charges “for any product or commodity furnished or to be furnished or any service rendered” to be just and reasonable. While arguably biomethane, once injected into pipelines, is a product furnished by a gas corporation, it would not be “reasonable” in the course of ordinary business for gas utility customers to pay exorbitant prices for biomethane simply to fund organic waste processing facilities.¹⁶

The Legislature can, and has, directed utility customers to fund certain biomethane costs, such as funding pipeline infrastructure for five dairy biomethane pilot projects.¹⁷ While SB 1383 directed the Commission to “consider additional policies to support the development and use in the state of renewable gas,”¹⁸ it also found that “more robust state and local funding mechanisms are needed to support the expansion of organics recycling capacity.”¹⁹ The legislature specifically directed the Commission in SB 1440 to “consider” a biomethane procurement goal if the Commission finds it to be cost-effective. But there is little indication in SB 1383 or SB 1440 that the Legislature intended to force utility customers to spend potentially **in excess of one billion**

¹⁴ Conclusions of Law 2-5.

¹⁵ Conclusion of Law 4.

¹⁶ TURN agrees that the key issue is not just the price difference, but whether the proposed procurement is “cost-effective” taking into account a valid cost for avoided GHG emissions.

¹⁷ See, Health and Safety Code, § 39730.7(d)(2).

¹⁸ Health and Safety Code, § 39730.8(c).

¹⁹ Public Resources Code § 42652(c).

dollars per year (see Section IV below) to fund organic waste diversion goals, especially when there is not guarantee that the proposed procurement will only benefit in-state waste diversion facilities (see Section VI below)! If anything, it appears that the cost of compliance with organic waste reduction regulations is supposed to be collected through fees charged by local jurisdictions.²⁰

Forcing utility customers to pay for organic waste diversion at municipal waste facilities has no connection to the provision of “safe, reliable and affordable utility service.” It is simply a method of using regressive utility bill taxation to fund programs that should instead be funded by more progressive and equitable local or state taxation.

As an aside, Finding of Fact 9 claims that capturing biomethane “reduces the amount of methane entering the atmosphere.” TURN notes that this finding may be factually incorrect. To the extent organic wastes are collected in landfills, regulations requiring flaring would convert methane into carbon dioxide emissions.

IV. THE PD SHOULD DISCLOSE THAT IT AUTHORIZES A PROGRAM THAT WOULD INCREASE UTILITY GAS COSTS BY OVER ONE BILLION DOLLARS PER YEAR

The Proposed Decision explains that the near-term biomethane procurement goal would ensure that biomethane procurement makes up for an expected shortfall in the capacity to process eight million tons of organic waste in 2025.²¹ The PD adopts a “medium term” procurement goal equivalent to 15% of core gas consumption in 2020, or an annual total of 88 billion cubic feet (Bcf), designed to be consistent with CARB’s 2030 landfill methane reduction goal based on diverting 75% of the 2014 levels of organic waste.²² While the PD requires the utilities to calculate potential rate impacts in future advice letter filings, it makes absolutely no mention of the potential utility bill impacts of the adopted policies.

²⁰ Public Resources Code § 42652.5(b).

²¹ PD, pp. 9 and 25. The PD does not appear to explain how this “processing capacity” shortfall would be converted into a volume of biomethane procurement, though it appears to contemplate some future calculation of this number. See, PD, pp. 39-40.

²² PD, p. 9 and fn. 11.

The Commission is at this stage authorizing the future procurement of potentially large quantities of biomethane. Consistent with the Commission’s long-standing commitments to equity and transparent decision-making, the Commission should at least note at this stage that the possible cost impacts on utility ratepayers could be huge.

One can easily calculate a “back-of-the-envelope” cost impact based of the “medium term” goal of procuring 88 Bcf of biomethane by 2030. The price “premium” for biomethane can be approximated at a minimum as the difference between the first “tier” of price comparisons, or \$17.70 per MMBtu, and the average price of fossil methane over the past decade, which was less than \$4/MMBtu. **The incremental cost of this amount of biomethane would be over one billion dollars per year!**²³ The PD essentially authorizes such cost premiums to be recovered from core (residential and small commercial) utility customers if and until the Commission adopts a different cost allocation in some future proceeding.

This is not a simple “pilot” program that might be implemented through advice letter filings providing program parameters, costs and rate impacts. This is a program that could result in profound increases to the cost of home heating and hot water for all California residents, and especially those low-income and vulnerable customers who may not be able to replace all their home appliances with electric appliances by 2025 or 2030.

V. THE PD’S CONCLUSION TO DEFER COST ALLOCATION RESTS ON LEGAL ERROR AND SHOULD BE MODIFIED EITHER TO RESOLVE COST ALLOCATION RIGHT NOW, OR TO AUTHORIZE A MEMORANDUM ACCOUNT TO TRACK ALL COST PREMIUMS

²³ Annual premium for 88 Bcf at \$17.30 per Mcf, versus current \$4.00 per Mcf = \$1.206 billion. This calculation is consistent with joint utility estimates of an annual cost impact of \$1.5 billion. See, Joint Utilities Comments, June 30, 2021, p. 3 and fn. 2. TURN agrees that the procurement program could still be cost effective if the benefits, primarily due to reduced GHGe emissions, outweigh the incremental costs of biomethane. The key issue is the exact amount and value of reduced methane emissions that would be caused by this procurement program.

A. The Commission Can and Should Decide Right Now that Any Cost Premium for Biogas Should be Allocated to All Customers Using the Public Purpose Program Rate Component

The PD agrees that “the CPUC should consider distributing above-market biomethane procurement costs to noncore customers ‘by either including the costs in the gas public purpose program or in a new non-bypassable charge that all noncore and CTA customers must pay’ or by some other means,” but then states that “it is appropriate to address this issue in a separate ratesetting proceeding because this is a quasi-legislative proceeding.”²⁴

Section 1701.1(c) defines a ratesetting proceeding as one “in which rates are established for a specific company,” whereas a quasi-legislative proceeding “may establish rules affecting an entire industry.” The Commission has interpreted these provisions to mean that it can authorize cost recovery that increases rates only in a ratesetting proceeding; but implementing industry-wide cost allocation policies in quasi-legislative proceedings does not violate these provisions, and the Commission has adopted cost allocation policies in quasi-legislative proceedings.²⁵ Most recently, the very same Assigned Commissioner who issued this PD issued a decision in the building decarbonization quasi-legislative rulemaking (R.19-01-011) mandating that the costs of the new WNDRR program “be collected via a new non-bypassable PPP charge to be recovered in rates by all electric IOUs under our jurisdiction.”²⁶

As a matter of policy, the Commission has often decided that the costs of “social and environmental” programs be allocated via the public purpose program charge to all ratepayers.²⁷ Given that this “biomethane procurement” program is being implemented to promote the State policy of increasing organic waste diversion, any costs authorized for this program must be

²⁴ PD, p. 24 (footnotes omitted).

²⁵ For example, D.21-04-015, OP 12 (issued in quasi-legislative R.18-03-011); D.21-11-002, OP 2 (issued in quasi-legislative R.19-01-011).

²⁶ D.21-11-002, p. 45 and OP 2(c).

²⁷ See, for example, D.21-04-014, pp. 76-77; D.20-08-045; D.19-08-026, p. 44; D.11-12-035, pp. 32-33; D.05-06-029, p. 18. See, TURN Comments on Staff Proposal, June 30, 2021, pp. 9-11.

allocated as broadly as possible by using a non-bypassable Public Purpose Program rate component collected from all customers on an equal cents per therm basis.²⁸

B. Alternatively, the PD Must Be Modified to Require That Any Cost Premium Be Tracked in a Memorandum Account Pending Future Adoption of a Cost Allocation Policy

The effect of the PD is that any costs for biomethane procurement contracts will be recovered in core gas rates, if and until the Commission adopts any different allocation in a future proceeding. Thus, all procurement costs incurred prior to any final decision in that future ratesetting proceeding cannot be allocated to other customers pursuant to the rule against retroactive ratemaking, unless the Commission at this time mandates a memorandum account to track above-market costs for future cost recovery. The short term procurement target is 2025. Any cost allocation decided in a proceeding opened in January 2023 could easily not be resolved until the latter part of 2024, if not later. Given that the utilities are apparently encouraged to start procurement “as soon as possible” in 2022, the utilities could already incur significant costs by 2024 or 2025.

If the Commission is serious that residential and small commercial core customers should not shoulder all the costs of promoting organic waste diversion in the State, it must modify the PD to establish a memorandum account that tracks the “above-market” costs for any procurement contracts authorized prior to the conclusion of the cost allocation proceeding.

TURN notes that by saddling core customers with the costs of all biomethane procurement, the Commission would unfairly create a competitive incentive for core customers to leave utility service for competitive service from a Core Transport Aggregator.

VI. THE PD FAILS TO ADOPT ANY CONDITIONS THAT WOULD ENSURE COMPLIANCE WITH § 651(b)(3)

Section 651(b)(3) requires that any biomethane either be “delivered to California through a dedicated pipeline” or must provide one of three “environmental benefits to California,” as

²⁸ The costs should be allocated on an equal cents per therm to all customers, including noncore and CTA customers.

enumerated in § 651(b)(3)(B)(ii). The staff proposal identified this “important final requirement of SB 1440,”²⁹ and stated that as a result any biomethane procurement “must focus on California-based sources of biomethane unless the source directly results in at least one of the forementioned environmental benefits to California.”³⁰ But, as TURN discussed on our comments on the staff proposal, ensuring that any biomethane procurement meets the requirements of 651(b)(3) necessitates adoption of eligibility requirements or conditions.³¹ Indeed, the fact that any contracts below the \$17.70/MMBtu threshold would be approved via a Tier 1 Advice Letter almost guarantees that utilities will sign contracts for biomethane output from existing out-of-state facilities. Such contracts will provide no additional GHG emissions reductions, and will not provide any of the benefits required by 651(b)(3).

Obviously, given that the entire rationale for the goals adopted by the PD is to promote in-state diversion of organic waste from landfills, one might assume that the intent is for the utilities to purchase biomethane from in-state organic waste processing facilities. However, aside from clearly excluding dairy biomethane as an eligible product, the PD does not actually limit procurement to in-state operations or to biomethane that flows directly into California.³² Indeed, while the PD reiterates that compliance with 651(b)(3) requirements is one of the issues identified in the original Scoping Memo,³³ the PD does not address compliance with § 651(b)(3) at all, and instead requires biomethane producers to use the M-RETS platform to track volumetric injections.³⁴ The M-RETS platform uses “digital certificates” that track the characteristics of units of biomethane produced anywhere within the United States or Canada. Without further restrictions, use of the M-RETS platform simply facilitates procurement of paper certificates from projects anywhere in the country, and does not at all meet the requirements of §

²⁹ Phase 4A Staff Proposal, June 1, 2021, p. 20.

³⁰ Phase 4A Staff Proposal, June 1, 2021, p. 21.

³¹ TURN Comments, June 30, 2021, p. 5.

³² For example, PD at 4 (“the Staff Proposal would allow them to procure biomethane from any source other than dairy operations while still prioritizing procurement of biomethane from organic waste diverted from landfills.”); See, also, PD at 27.

³³ PD, p. 6.

³⁴ PD, pp. 39-40.

651(b)(3). Without explicit additional restrictions or conditions, the utilities would be free to procure out-of-state biomethane certificates from existing facilities, thus entirely negating the stated intent of this program.

VII. THE USE OF CAP AND TRADE FUNDS FOR BIOMETHANE PROJECTS IS INEQUITABLE

The PD expands the potential number of pilot projects to create biogas from agricultural waste and urban wood waste, and directs the utilities to use \$40 million from 2022 Cap-and-Trade allowance proceeds to fund “pipeline build-out costs and related expenses” for syngas projects.³⁵ Using cap-and-trade funds for such projects is inequitable.

The Commission directed gas utilities to return cap and trade allowance revenues to residential customers as bill credits based on statutory directives, guidance from the Air Resources Board, and the overall intent to mitigate the impacts of higher rates and increased cost of goods and services on residential, and especially low-income, customers.³⁶ Using cap-and-trade proceeds to fund projects thus directly reduces the bill credits, and is analogous to forcing residential customers to pay for the entire cost of the project. These syngas pilot projects will benefit individual project developers, agricultural customers, and municipalities that would otherwise pay for wood waste diversion. It is inequitable to require residential customers to pay all of the costs of such projects. If the Commission authorizes these pilot projects, they should also be funded through an equal cents per therm non-bypassable rate component that collects costs from all classes of customers.

³⁵ PD, pp. 35-37.

³⁶ See, for example, D.18-03-017, pp. 28-35.

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APPENDIX A

TURN's Recommended Changes to the Findings of Fact, Conclusions of Law, and Ordering Paragraphs

(Deletions in ~~striketrough~~, additions underlined)

While TURN provides certain suggested modifications, our primary recommendation is that the PD be withdrawn. All references to future Advice Letter filings should be stricken. The cost effectiveness of any adopted procurement target should be decided in a future decision of the Commission.

Finding of Fact, Conclusion of Law or Order Paragraph	Change and/or Addition
FOF 1	Targets or goals shall be consistent with the organic waste disposal reduction targets specified in Section 39730.6 of the Health and Safety Code and the regulations adopted pursuant to Section 42652.5 of the Public Resources Code to achieve those targets, <u>and must be cost-effective consistent with Public Utilities Code Section 651(a).</u>
FOF 9	Capturing biomethane and substituting it for methane from gas wells <u>may</u> reduces the amount of methane entering the atmosphere.
FOF 14	The Cap and Trade allowance proceeds set aside in this decision shall be used to reduce statewide greenhouse gas emissions by <u>It is appropriate to use a non-bypassable equal cents per therm public purpose program rate component to fund</u> ing the agricultural waste and urban wood waste diverted from landfills pilot programs to support wildfire prevention and short-lived climate pollution reduction.
COL 4	Biomethane may be substituted for well gas even if the total cost of a unit of biomethane exceeds the total cost of a unit of well gas if the substitution is necessary to enable the state to meet its methane emission reduction goals.
NEW COL	<u>It is appropriate to allocate the above-market cost premium for any biomethane procurement to all customers on an equal cents per therm basis using a non-bypassable public purpose program rate component.</u>